

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

JOEL TYNER,

Plaintiff,

v.

CITY OF OMAHA and OMAHA FIRE
DEPARTMENT,

Defendants.

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8:05CV460

ORDER

This matter is before the court on defendants' motion to dismiss, Filing No. 6. This is an action for discrimination in employment under title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.* Defendants move to dismiss for lack of jurisdiction and for failure to state a claim for which relief can be granted. Defendants assert that plaintiff has failed to allege that he has filed a complaint with the Equal Employment Opportunity Commission ("EEOC") and further assert that the Omaha Fire Department is not an entity subject to suit.

In opposition to the motion, plaintiff concedes that the Omaha Fire Department is not a suable entity and withdraws its claim against the Omaha Fire Department. Plaintiff further argues that it filed a charge of discrimination and received a right-to-sue letter. Accordingly, plaintiff will be allowed to amend his complaint to so state.

IT IS HEREBY ORDERED that:

1. Plaintiff is granted leave to file an amended complaint within ten days of the date of this order;
2. Defendants' motion to dismiss is denied.

DATED this 10th day of April, 2006.

BY THE COURT:

s/Joseph F. Bataillon
JOSEPH F. BATAILLON
United States District Judge